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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THE PEOPLE,

Plaintiff and Respondent,

v.

PAUL RAY CASTILLO,

Defendant and Appellant.

H038927

(Santa Clara County

Super. Ct. No. CC1115496)

In August 2012, pursuant to a negotiated plea, defendant Paul Ray Castillo pleaded guilty to seven felonies, including one count of first degree murder, and pleaded no contest to two felonies. He also admitted all enhancements alleged in the second amended complaint, including prior strike allegations and weapon enhancements. Defendant received a sentence of life without the possibility of parole, consecutive to 208 years in prison, consecutive to 40 years in prison. Defendant filed a timely appeal. We will affirm.

FACTUAL BACKGROUND¹

The underlying charged offenses were committed over an 11-day period in September 2011.

¹ The factual background is derived from the probation officer's report included in the clerk's transcript.

On the afternoon of September 6, 2011, defendant met with Michael Vistan, who was attempting to sell his 1985 Nissan 300ZX. After defendant gave Vistan a telephone number and a false name, he was allowed to test drive the car. Defendant did not return the car, and the telephone number given to Vistan was later confirmed as defendant's. (Count 8).

On September 9, 2011, Rosemary Desievi, as she was backing out of her driveway, accidentally cut off defendant, "who was driving an older, sporty vehicle." He followed Desievi, pulled up next to her, shouted profanities at her, and pointed a black revolver at her. Desievi positively identified defendant in a photo lineup. (Count 9).

On the evening of September 13, 2011, Tu Bui was at a restaurant with a friend when he observed defendant breaking into his Mercedes ML500 vehicle. Defendant approached Bui, saying " 'Boy, I got you.' " Defendant then drove away in what was later determined to have been Vistan's stolen Nissan, trying to run over Bui as he fled. Bui positively identified defendant in a photo lineup. (Counts 6 and 7.)

On the morning of September 14, 2011, defendant approached Srikanth Kaligotla while he was sitting in his car in a parking lot; defendant pointed a black revolver at Kaligotla, demanding that he turn over his belongings. He handed defendant his wallet, iPhone, and jewelry, and defendant fled the scene in an older model Nissan. Kaligotla gave the police the Nissan's license plate number, which matched Vistan's stolen car. Kaligotla positively identified defendant. (Count 5.)

At approximately 11:00 a.m. on September 16, 2011, Chin Lam was pumping gas into his car at a Chevron station. Defendant approached Lam and demanded that he turn over his belongings. Lam did not comply and defendant shot him in the hip and fled in Vistan's stolen Nissan. Lam survived the attack, but was hospitalized for approximately one week. Defendant's associates and another witness positively identified defendant as the perpetrator in a photograph obtained from a surveillance video. (Count 3.)

At approximately 11:50 a.m. on September 16, 2011, the police received a witness's report of a kidnapping and carjacking at a local shopping center. The witness reported seeing a male punching another person and forcing that person into the rear seat of a white car. The witness also reported hearing a gunshot. The police determined that the victim was a 60-year-old woman, Cindy Nguyen, who had reportedly called a friend shortly before noon saying that she needed help because her car had a dead battery. After a few minutes, Nguyen called her friend back, saying that she was being helped by a person later identified as defendant. It was subsequently confirmed that defendant had been seen driving Nguyen's white Lexus. (Count 2.)

At approximately 7:30 that evening, San Jose Police Officer Hatzenbuhler and other officer(s) attempted to make a traffic stop after spotting Nguyen's Lexus. Defendant refused to comply, and he attempted to run over Officer Hatzenbuhler. The officer fired seven rounds at defendant as he fled. The abandoned car was located later; the police found a cell phone belonging to defendant, a black .357 Magnum revolver, and several items belonging to Nguyen. (Count 4.)

The next day, the defendant's family reported a body in their garage; they told the police that defendant had instructed them the day before not to enter the garage. Police located Nguyen's body in the garage at approximately 7:00 a.m. She had been wrapped in a blanket; had been handcuffed; had a shirt wrapped around her head covering her eyes; and had a bullet hole between her eyes that corresponded with a hole in the shirt. She was pronounced dead at the scene. A ballistics test matched the bullet with the revolver found in the Lexus. (Count 1.)

Defendant was arrested by police at a pizza restaurant in Sacramento on the evening of September 18, 2011. He had previously received assistance from two individuals in fleeing the Bay Area.

PROCEDURAL HISTORY

Defendant was charged by second amended complaint with nine felonies, i.e., murder (Pen. Code, § 187; count 1);² kidnapping during a carjacking (§ 209.5; count 2); attempted second degree robbery (§ 664/§§ 211-212.5, subd. (c); count 3); assault on a peace officer with a deadly weapon (§ 245, subd. (c); count 4); second degree robbery (§§ 211-212.5, subd. (c); count 5); burglary of a car (§§ 459-460, subd. (b); count 6); assault with a deadly weapon other than a firearm (§ 245, subd. (a); count 7); car theft (Veh. Code, § 10851, subd. (a); count 8); and assault with a firearm (§ 245, subd. (a)(2); count 9). It was further alleged that defendant committed the offense: of murder (count 1) by personally and intentionally discharging a firearm which proximately caused the victim's death (§ 12022.53, subd. (d) [and § 12022.53, subd. (c) and § 12022.53, subd. (b)]), and while engaged in the commission of two other felonies, i.e., kidnapping and carjacking (§ 190.2, subd. (a)(17)); of kidnapping during a carjacking (count 2) by personally and intentionally discharging a firearm which proximately caused the victim's death (§ 12022.53, subd. (d) [and § 12022.53, subd. (c) and § 12022.53, subd. (b)]); of attempted second degree robbery (count 3) by personally and intentionally discharging a firearm which proximately caused great bodily injury to the victim (§ 12022.53, subd. (d) [and § 12022.53, subd. (c) and § 12022.53, subd. (b)]); and of second degree robbery (count 5) by personally using a firearm (§ 12022.53, subd. (b)). It was further alleged that defendant had previously been convicted of residential burglary, a serious felony (§ 667, subd. (a)); had previously been convicted of a violent or serious felony, i.e., a strike (§§ 667, subs. (b)–(i); 1170.12), namely, residential burglary; and had suffered a previous juvenile adjudication under Welfare and Institutions Code section 602 for an offense listed under Welfare and Institutions Code section 707, subdivision (b), namely,

² All further statutory references are to the Penal Code unless otherwise stated.

carjacking with personal use of a firearm and that he committed the offense when he was 16 years or older (§§ 667, subds. (b)–(i); 1170.12).

On August 7, 2012, defendant pleaded guilty to counts 1, 2, 3, 5, 6, 7, and 8, and pleaded no contest to counts 4 and 9.³ At the same time, defendant admitted all of the allegations of the second amended complaint. Defendant waived the right to a preliminary hearing and also purportedly waived his “appellate rights after plea and sentencing.”⁴ He entered this plea with the understanding that he would receive a sentence of life in prison without the possibility of parole and a minimum of 206 years and four months, consecutive to 40 years, and a maximum of 211 years, consecutive to

³ In a separate proceeding two days later, the court clarified and defendant agreed that, in pleading guilty to murder (count 1), he was admitting that he had committed murder in the first degree.

⁴ Prior to the entry of defendant’s plea, the court advised him of the rights that he was waiving by entering into the plea and the consequences of that plea. There was no mention by the court of a waiver of appellate rights. After the court completed its voir dire, it asked whether counsel had additional questions. The Deputy District Attorney then asked, “Mr. Castillo, do you waive your appellate rights after plea and sentencing.” Defendant responded, “Yes, sir.” There was no written plea agreement or any other evidence indicating defendant’s waiver of his right to appeal, and there is nothing in the record showing that defendant was specifically admonished of the consequences of giving up his appellate rights. Although under *People v. Panizzon* (1996) 13 Cal.4th 68, 80, a criminal defendant’s knowing, intelligent, and voluntary waiver of appellate rights may be enforced, and such waiver may be manifested either orally or in writing (*id.* at p. 80), the circumstances there indicated a clear waiver contained in a written plea agreement read and signed by the defendant. This case is closer to the circumstances in *People v. Rosso* (1994) 30 Cal.App.4th 1001, 1006, in which the court rejected the People’s contention that the defendant had orally waived his appellate rights based upon his affirmative answer to the court’s question, “ ‘Do you waive and give up these [constitutional] rights *and your right to appeal?*’ ” As explained by the Supreme Court in *Panizzon* in distinguishing the circumstances in *Rosso*, there was “no evidence of a written waiver of appellate rights read and signed by the defendant [in *Rosso*] after discussion with his attorney and no evidence that an attorney had explained the right to appeal to the defendant.” (*Panizzon*, at p. 84.) We therefore conclude here that the reference in the reporter’s transcript to waiver of appellate rights does not compel dismissal of this appeal.

40 years. The parties stipulated to a factual basis for the plea and the court found that such a factual basis existed.

On August 30, 2012, the court sentenced defendant to life in prison without the possibility of parole as to count 1, consecutive to 208 years to life in prison, consecutive to 40 years.⁵

Defendant filed a timely notice of appeal.

DISCUSSION

We appointed counsel to represent defendant in this court. Appointed counsel filed an opening brief which stated the case and the facts but raised no specific issues. We notified defendant of his right to submit written argument on his own behalf within 30 days. We have received no written argument from defendant.

We have reviewed the entire record pursuant to *People v. Wende* (1979) 25 Cal.3d 436. Based upon that review, we have concluded that there is no arguable issue on appeal.

⁵ The court sentenced defendant: as to count 1, to life without possibility of parole, and 25 years to life for the firearm enhancement (§ 12022.53, subd (d)), consecutive to five years for the serious felony allegation (§ 667, subd. (a)); as to count 2 with enhancements, a total sentence of 62 years to life, consecutive to five years for the serious felony allegation (§ 667, subd. (a)), the sentence for this count being stayed pursuant to section 654; as to count 3 with enhancements, a total term of 58 years to life, consecutive to five years; as to count 4 with enhancements, 25 years to life, consecutive to five years; as to count 5 with enhancements, 25 years to life, consecutive to 15 years; as to count 6 with enhancements, 25 years to life with said sentence to run concurrent with the sentence for the count 7 conviction; as to count 7 with enhancements, 25 years to life, consecutive to five years; as to count 8 with enhancements, 25 years to life; and as to count 9 with enhancements, 25 years to life, consecutive to five years.

DISPOSITION

The judgment is affirmed.

Márquez, J.

WE CONCUR:

Rushing, P.J.

Grover, J.